

## Message Text

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ORIGIN STR-04

INFO OCT-01 IO-10 ISO-00 STRE-00 FEA-01 AGR-05 CEA-01

CIAE-00 COME-00 DODE-00 EB-07 FRB-03 H-02 INR-07

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CIEP-01 SS-15 TAR-01 TRSE-00 USIA-06 PRS-01 SP-02

OMB-01 AF-06 ARA-06 EA-07 EUR-12 NEA-10 XMB-02 /134 R

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TO USMISSION GENEVA

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E.O. 11652: N/A

TAGS:ETRD, GATT

SUBJECT: GATT DISPUTE SETTLEMENT AND TRADE ACT  
SECTION 301

REF: GENEVA 9238

1. APPRECIATE MISSION'S REPORT OF DE PASCAL'S VIEW OF USE  
OF GATT PROCEDURES IN CONNECTION WITH SECTION 301 CASES.

2. SECTION 301 DOES NOT CONTAIN AN EXPLICIT REQUIREMENT  
THAT THE USG SEEK INTERNATIONAL ADJUDICATION OF DISPUTES  
NOR DOES IT REQUIRE THAT ANY INTERNATIONAL PROCEDURES  
BE COMPLIED WITH PRIOR TO PRESIDENTIAL ACTION UNDER THE  
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AUTHORITIES CONTAINED IN THIS SECTION. SECTION 252 OF

THE TRADE EXPANSION ACT OF 1962, THE PREDECESSOR RETALIATORY PROVISION, REQUIRED THAT THE PRESIDENT, IN ACTING AGAINST UNREASONABLE FOREIGN RESTRICTIONS, HAVE QUOTE DUE REGARD FOR THE INTERNATIONAL OBLIGATIONS OF THE UNITED STATES END QUOTE. THIS PHRASE WAS PURPOSELY DELETED FROM THE CURRENT RETALIATORY AUTHORITY. THE SENATE FINANCE COMMITTEE REPORT STATES IN THIS REGARD THAT QUOTE THERE WOULD BE SITUATIONS, SUCH AS IN THE CASE OF UNREASONABLE FOREIGN IMPORT RESTRICTIONS WHERE THE PRESIDENT OUGHT TO BE ABLE TO ACT OR THREATEN TO ACT UNDER SECTION 301, WHETHER OR NOT SUCH ACTION WOULD BE

ENTIRELY CONSISTENT WITH THE GATT ARTICLES, . . . FURTHERMORE, THE DECISION-MAKING PROCESS UNDER THE GENERAL AGREEMENT OFTEN FRUSTRATES THE ABILITY OF THE UNITED STATES (AS WELL AS OTHER CONTRACTING PARTIES) TO OBTAIN THE DECISIONS NEEDED TO ENABLE THE UNITED STATES TO PROTECT ITS RIGHTS AND BENEFITS UNDER THE GATT . . . THE COMMITTEE IS NOT URGING THAT THE UNITED STATES UNDERTAKE WANTON OR RECKLESS RETALIATORY ACTION UNDER SECTION 301 IN TOTAL DISDAIN OR APPLICABLE INTERNATIONAL AGREEMENTS. HOWEVER, THE COMMITTEE FELT IT WAS NECESSARY TO MAKE CLEAR THAT THE PRESIDENT COULD ACT TO PROTECT U.S. ECONOMIC INTERESTS WHETHER OR NOT SUCH ACTION WAS CONSISTENT WITH THE ARTICLES OF AN OUTDATED INTERNATIONAL AGREEMENT INITIATED BY THE EXECUTIVE 25 YEARS AGO AND NEVER APPROVED BY THE CONGRESS. END QUOTE.

3. POSITION TAKEN BY DE PASCAL THAT COUNTRIES MIGHT LINEUP AGAINST THE UNITED STATES IF THEY FELT THAT WE WOULD BE BRINGING A SERIES OF GATT ACTIONS IN RESPONSE TO 301 CASES, IS UNFORTUNATE. WHILE THERE HAS BEEN NO GENERAL POLICY DECISION IN THE USG TO SEEK GATT OPINIONS ON ALL 301 CASES, IT SHOULD BE IN THE INTEREST OF THE EC AND OTHERS, AS WELL AS THE US, TO HAVE

VIAABLE DISPUTE SETTLEMENT PROCEDURES IN THE GATT. THE REACTION REPORTED REFTEL IS BOTH UNFORTUNATE AND SHORT-SIGHTED, AND LOGICALLY WOULD LEAD TO DISENCHANT-LIMITED OFFICIAL USE

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MENT WITH INTERNATIONAL PROCESSES IF THEY PROVE TO BE AN EMPTY GESTURE. THIS WOULD LEAVE LITTLE ALTERNATIVE BUT UNILATERAL ACTION, WITHOUT INTERNATIONAL EXAMINATION OF FACTUAL AND LEGAL DISPUTES.

4. ON QUESTION OF HOW 301 CASES WILL BE HANDLED IN FUTURE, THERE IS NO RIGID PLAN FOR ALL CASES, AND EACH CASE WILL BE TREATED INDIVIDUALLY. REGULATIONS HAVE

BEEN WRITTEN TO DISCOURAGE FRIVOLOUS CLAIMS AND ASSURE THAT PETITIONS ARE BACKED UP WITH SOLID INFORMATION. IN INSTANCES WHERE IT IS APPROPRIATE, IT MIGHT BE BEST TO USE BILATERAL DISCUSSIONS AS THE ONLY MEANS USED TO FIND A SOLUTION, FOR EXAMPLE WHEN THERE IS A NEED FOR PROMPT ACTION OR WHEN THE

COMPLAINED OF PRACTICE DOES NOT INVOLVE A GATT OBLIGATION. IN OTHER CASES, IT MIGHT BE APPROPRIATE TO USE BOTH BILATERAL CONSULTATIONS AND GATT PROCEDURES EITHER CONCURRENTLY OR ONE FOLLOWING THE OTHER, DEPENDING ON THE PARTICULAR CIRCUMSTANCES INVOLVED. GIVEN U.S. COMMITMENT TO GATT MECHANISM, IF THE COMPLAINT

ENCOMPASSES ACTS OR PRACTICES WHICH WOULD BE VIOLATIONS OF THE GATT, U.S. CANNOT BE EXPECTED TO BYPASS THAT PROCESS IN CASES WHERE BILATERAL RESOLUTIONS DO NOT APPEAR FORTHCOMING.

5. MISSION SHOULD USE APPROPRIATE ELEMENTS OF ABOVE IN FURTHER DISCUSSIONS WITH DE PASCAL, ON ANY OTHER DELEGATIONS. KISSINGER

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## Message Attributes

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**Capture Date:** 01 JAN 1994  
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**Current Classification:** UNCLASSIFIED  
**Concepts:** DISPUTE SETTLEMENT, POLICIES  
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**Decaption Date:** 01 JAN 1960  
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**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
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